No. 96-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JOYCE B. JOHNSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Wm. J. Sheppard, Esquire
COUNSEL OF RECORD
D. Gray Thomas, Esquire
Elizabeth L. White, Esquire
Sheppard and White, P.A.
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661

COUNSEL FOR PETITIONER

August 2, 1996

42 pp

QUESTIONS PRESENTED FOR REVIEW

The questions presented by this petition are:

1. Is reversal of a perjury conviction required where the trial judge, not the jury, decides the essential element of materiality?

2. In what manner is United States v. Gaudin, 515 U.S. ___, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), to be applied to cases then on direct appeal in circuits where a Gaudin-type objection would have been frivolous at the time of trial?

3. Does Sullivan v. Louisiana, 508 U.S. 275 (1993), limit the holding of United States v. Olano, 507 U.S. 725 (1993)?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (Continued)

No. 96-____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JOYCE B. JOHNSON,

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

The petitioner, Joyce B. Johnson, respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Eleventh Circuit entered in this case on March 19, 1996.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix 1a through 9a, to this petition and is unpublished. That court's affirmance without published opinion is noted at 82 F.3d 429.

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered its judgment on March 19, 1996. A timely Petition for Rehearing was denied by that Court of Appeals on June 11, 1996, and a copy of the unpublished Order Denying Rehearing appears at Appendix 10a through 11a to this petition. The unpublished judgment of the Court of Appeals, which was entered on March 19, 1996, and issued as the mandate on June 20, 1996, appears at Appendix 12a through 13a to this

petition. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case requires interpretation and application of the Fifth and Sixth Amendments to the Constitution of the United States. The Fifth Amendment provides, in pertinent part:

> No person shall...be deprived of life, liberty or property, without due process of law....

The Sixth Amendment provides, in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury....

STATEMENT OF THE CASE

A. The Basis for Jurisdiction Below.

Joyce B. Johnson was convicted of one count of perjury under 18 U.S.C. §1623 in

the United States District Court for the Middle District of Florida. The basis for federal jurisdiction in the court of first instance was under 18 U.S.C. §3231.

B. The Facts Material to the Questions Presented.

Joyce B. Johnson was convicted following a jury trial on one count of having made false material statements to a United States grand jury with respect to disposition of cash proceeds of alleged narcotics transactions by Earl Fields, the father of her teenaged daughter. She was accused of testifying falsely with respect to the source, circumstances of receipt, amount and whereabouts of funds used for the improvement of certain residential real property, which funds she told the grand jury had come from a source other than Mr. Fields. Ms. Johnson had acknowledged to the grand jury that some

of the funds she had used to purchase the property had been provided by Mr. Fields.

At trial, in December, 1994, the district court did not submit determination of the materiality element of the perjury charge to the jury, but rather instructed the jury that the government had demonstrated materiality of the statements at issue. Ms. Johnson's counsel did not concede that the statements were material but did not object to the trial judge determining the materiality issue. The practice of the trial judge making the determination of materiality, vel non, was required by long-standing circuit precedent. See, e.g., United States v. Molinares, 700 F.2d 647, 653 (11th Cir. 1983).

At the time of trial in this case, almost every circuit had held that the determination of materiality in a false

statement prosecution was an issue of law for decision by the trial judge, not the jury. See, United States v. Gaudin, 28 F.3d 943, 955 (9th Cir. 1994) (Kozinski, J., dissenting), aff'd., 515 U.S. ___, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995). Subsequent to the trial in Ms. Johnson's case and prior to briefing in the Court of Appeals, the Court rendered its decision in United States v. Gaudin, 515 U.S. ___, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995), holding that failure to submit the question of materiality to the jury in certain false statements prosecutions violates a defendant's constitutional right for a jury to determine guilt beyond a reasonable doubt of every element of a charged offense.

The Court of Appeals in this case reviewed the issue for plain error. The court below found that Ms. Johnson could

not sustain a burden of showing that the error affected her substantial rights by having prejudicially affected the outcome of the original trial. In making that determination, the Court of Appeals weighed the evidence of materiality and affirmed Ms. Johnson's conviction upon a finding that such evidence was substantial and "overwhelming." Appendix at 8a-9a.

REASONS WHY THE WRIT SHOULD BE GRANTED

The decision of the Court of Appeals contravenes holdings by this Court that the Due Process and Jury Trial Clauses of the Fifth and Sixth Amendments entitle a criminal defendant to a jury verdict on each element of a charged offense. United States v. Gaudin, 515 U.S. ___, ___, ___, 115 S.Ct. 2310, ___, ___, 132 L.Ed.2d 444, 449, 458 (1995); Sullivan v. Louisiana, 508 U.S. 275, ___, 113 S.Ct. 2078, ___,

124 L.Ed.2d 182, 188 (1995); In Re Winship, 397 U.S. 358, 364 (1970). The Court has not decided the important issue of the standard of review appropriate where juries are prevented from deciding an essential element of a charged offense, in accordance with clearly established binding precedent that is conclusively overruled while direct appeals of the jury verdicts remain pending, particularly as to Gaudin error. See, Gaudin, 515 U.S. at ____, 115 S.Ct. at ___, 132 L.Ed.2d at 461 (Rehnquist, C.J., concurring). The circuits are in great conflict about this issue. Compare, e.g., United States v. Baumgardner, 85 F.3d 1305, 1308-1310 (8th Cir. 1996) (Gaudin error results in reversal under plain error analysis); United States v. McGuire, 79 F.3d 1396, 1401-1405 (5th Cir. 1996) (same); United States v. Nash, 76 F.3d 282, 285 (9th Cir.

1996) (same); United States v. Perez, 67 F.3d 1371, 1386 (9th Cir. 1995) (court must correct error of failure to submit element of offense to jury under plain error analysis), reh'g. en banc granted, 77 F.3d 1210 (9th Cir. 1996); United States v. DiRico, 78 F.3d 732, 737-738 (1st Cir. 1996) (absence of jury verdict as to materiality is a structural defect requiring reversal); United States v. Pettigrew, 77 F.3d 1500, 1511 (5th Cir. 1996) (harmless error analysis inapplicable to Gaudin error); United States v. David, 83 F.3d 638, 641-648 (4th Cir. 1996) (plain error reversal based on Gaudin error) with United States v. Keys, 67 F.3d 801, 811-812 (9th Cir. 1995) (Gaudin error does not require reversal under plain error analysis), reh'g. en banc granted, 78 F.3d 465 (9th Cir. 1996); United States v. Ross, 77 F.3d 1525, 1540-

1541 (7th Cir. 1996) (defendant meets all elements of plain error analysis but court declines to exercise discretion to reverse); United States v. Allen, 76 F.3d 1348, 1368 (5th Cir. 1996) (same as Ross), petitions for cert. filed, ___ U.S.L.W. ___, Nos. 95-9169 and 95-9205 (May 28, 1996); United States v. Kramer, 73 F.3d 1067, 1075-1078 (11th Cir. 1996) (substantial rights unaffected because of weight of evidence); United States v. Toussaint, 84 F.3d 1406 (11th Cir. 1996 (same as Kramer); United States v. Johnson, 82 F.3d 429 (11th Cir. 1996) (table) (instant case, Case No. 95-2417, 11th Cir. March 19, 1996, same as Kramer) (Appendix at 8a-9a). See also, United States v. Lopez, 71 F.3d 954, 959-961 (1st Cir. 1995) (holding that Gaudin error is incapable of review for harmlessness but suggesting in dicta that plain error

review would produce different result), cert. denied, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___, 64 U.S.L.W. 3837 (June 17, 1996); United States v. Ali, 68 F.3d 1468, 1474-1475 (2d Cir. 1995) (reversal for Gaudin error without any harmless or plain error inquiry), modified on other grounds, 86 F.3d 275 (2d Cir. 1996).

The Court has held clearly that a defendant charged with certain federal false statement offenses has a constitutional "right to have a jury determine, beyond a reasonable doubt, his guilt of every element of the crime with which he is charged," including the materiality of alleged false statements. Gaudin, 515 U.S. at ____, 115 S.Ct. at ___, 132 L.Ed.2d at 458. The Court has held conclusively that the absence of a constitutional jury verdict may not be reviewed for harmless error absent an

error capable of review for harmlessness, i.e., prejudice, such as where no jury verdict of guilty beyond a reasonable doubt was actually rendered at trial. See, e.g., Sullivan v. Louisiana, 508 U.S. 275, ___ - ___, 113 S.Ct. 2078, ___-___, 124 L.Ed.2d 182, 189-191 (1993). Additionally, a reviewing court cannot disregard, by use of a harmlessness analysis of the weight of the evidence, a failure of a jury to make any determination of an essential element of an offense. Carella v. California, 491 U.S. 263, 273 (1989) (Scalia, J., concurring).

The Court has not decided the important question of whether the error at issue in this case is subject to plain error analysis. United States v. Gaudin, 515 U.S. at ___, 115 S.Ct. at ___, 132 L.Ed.2d at 461 (Rehnquist, C.J.,

concurring). However, the right to a jury determination of each element of a charged offense is a constitutional guarantee of structural dimension. Carella, 491 U.S. at 268 (Scalia, J., concurring). Error resulting in an absence of a jury verdict as to each element of an offense is simply incapable of review for prejudice. Sullivan v. Louisiana, 508 U.S. 275, ___ - ___, 113 S.Ct. 2078, ___-___, 124 L.Ed.2d 182, 189-191 (1993). Even if a plain error analysis applies, the Court should consider whether the absence of a jury verdict on each element of an offense meets the "substantial rights" prong of the inquiry by seriously affecting "the fairness, integrity or public reputation of judicial proceedings," meriting reversal of a conviction. United States v. Olano, 507 U.S. 725, 736 (1993)

(citation and internal quotations omitted).

The harmless error analysis of Fed.R.Cr.P. 52(a), see Sullivan, 408 U.S. at ___-___, 113 S.Ct. at ___-___, 124 L.Ed.2d at 189-191, is materially identical to the prejudice prong of a Fed.R.Cr.P. 52(b) inquiry, see Olano, 507 U.S. at 734-735 (1993), with respect to consideration of the weight of the evidence, although differing as to which party bears the burden of appellate persuasion. Olano, 507 U.S. at 734 (defendant bears burden of showing prejudice under Fed.R.Cr.P. 52(b)). But see, United States v. Viola, 35 F.3d 37, 42 (2d Cir. 1994) (burden under Rule 52(b) shifted to prosecution in light of intervening decision changing previously settled law), cert. denied, ___ U.S. ___, 115 S.Ct. 1270, 131 L.Ed.2d 148 (1995).

The Court should consider the important question of whether Gaudin error is merely "trial error" or is a "structural defect affecting the framework within which the trial proceeds," Arizona v. Fulminante, 499 U.S. 279, 310 (1991), rendering any analysis under Fed.R.Crim.P. 52 violative of the Due Process and Jury Trial clauses of the Fifth and Sixth Amendments.

Fed.R.Cr.P. 52(b) codifies prior decisional law grounded, at least in part, on a policy concern to promote accurate legal decisions in trial courts, and to inhibit sandbagging of trial courts, which thwarts such a goal. Fed.R.Cr.P. 52 advisory committee notes (1944 adoption); Wiborg v. United States, 163 U.S. 632, 658 (1896); United States v. Young, 470 U.S. 1, 15-16 (1985). However, these concerns simply are not implicated where, as in the present case, a motion or objection would

have been utterly frivolous and wasteful in light of clear, binding precedent at the time of trial and so was not raised, but becomes meritorious in light of an intervening clear change in law during the pendency of direct appeal. See, e.g., United States v. Baumgardner, 85 F.3d 1305, 1308-1309 (8th Cir. 1996). A defendant should not be faulted for failing to have made a trial objection under such circumstances. See, id. A contrary result would encourage frivolous objections during trials.

Additionally, "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past." Griffith v. Kentucky, 479 U.S. 314, 328 (1987). If

viewed under a plain error analysis, reviewing courts must determine whether the error must have been clear at the time of trial to be noticed or whether plainness on appeal is the proper measure.

This important question remains unsettled by this Court. See, Gaudin, 515 U.S. at ___, 115 S.Ct. at ___, 132 L.Ed.2d at 461 (Rehnquist, C.J., concurring) (suggesting issue "subject to dispute"); Olano, 507 U.S. at 734 (question unanswered). But see, Griffith, 479 U.S. at 326 ("Court does not disregard current law, when it adjudicates a case pending before it on direct review...regardless of the specific characteristics of the particular new rule announced"). The strongly predominant view in the courts of appeals is that plainness or clarity of error turns on the state of the law at the time of appellate adjudication, consistent

with Griffith. United States v. Baumgardner, 85 F.3d 1305, 1308-1309 (8th Cir. 1996) (plainness of error determined under law existing at time of appeal); United States v. McGuire, 79 F.3d 1396, 1402 (5th Cir. 1996) (same); United States v. Walker, 59 F.3d 1196, 1198 (11th Cir.) (same), cert. denied, ___ U.S. ___, 116 S.Ct. 547, 133 L.Ed.2d 450 (1995); United States v. Keys, 67 F.3d 801, 809-810 (9th Cir. 1995) (same), reh'g. en banc granted, 78 F.3d 465 (1996); United States v. Webster, 84 F.3d 1056, 1067 (8th Cir. 1996) (same); United States v. David, 83 F.3d 638, 645-646 (4th Cir. 1996) (same); United States v. Ross, 77 F.3d 1525, 1539-1540 (7th Cir. 1996) (same); United States v. Viola, 35 F.3d 37, 42 (2d Cir. 1994) (same), cert. denied, ___ U.S. ___, 115 S.Ct. 1270, 131 L.Ed.2d 148 (1995); United States v. Retos, 25 F.3d 1220, 1230 (3d

Cir. 1994) (same); United States v. Jones, 21 F.3d 165, 173 and n. 10 (7th Cir. 1994) (same). But cf., United States v. Calverly, 37 F.3d 160, 163-163 and n.18 (5th Cir. 1994) (en banc) (question not specifically addressed but viewing plainness from perspective of law at time of trial), cert. denied, ___ U.S. ___, 115 S.Ct. 1266, 131 L.Ed.2d 145 (1995); United States v. Washington, 12 F.3d 1128, 1139 (D.C. Cir.) (supervening decision doctrine created to provide defendant the benefit of change in law), cert. denied, ___ U.S. ___, 115 S.Ct. 98, 130 L.Ed.2d 47 (1994). This important question should be settled or the Court should consider whether a Gaudin error is ever subject to any Fed.R.Cr.P. 52(b) analysis.

The essential element of materiality in perjury prosecutions must be submitted to the jury for decision of guilt beyond a

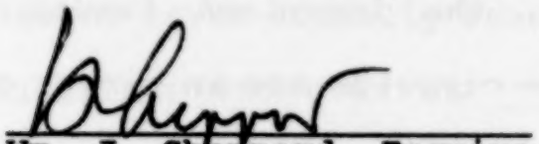
reasonable doubt, vel non. Gaudin, 515 U.S. at ___, 115 S.Ct. at ___, 132 L.Ed.2d at 458. Review of a Gaudin error for harmlessness or for prejudice under Fed.R.Cr.P. 52(b), see Olano, 507 U.S. at 734, unconstitutionally leaves judges to review decisions never actually reached by juries. Sullivan, 508 U.S. at ___, 113 S.Ct. at ___, 124 L.Ed.2d at 189-190. Guilt beyond a reasonable doubt as to each element of a charged offense must be determined by a jury, not judges reviewing a record, or else the wrong constitutional decisionmaker has decided the case. See, Carella v. California, 491 U.S. 263, 269 (1989) (Scalia, J., concurring), quoting, Bollenbach v. United States, 326 U.S. 607, 614 (1946); Cabana v. Bullock, 474 U.S. 376, 384-385 (1986); and Rose v. Clark, 478 U.S. 570, 578 (1986).

The constitutional right to a jury trial in a criminal case is a profound and fundamental prohibition against judges making determinations of guilt. Duncan v. Louisiana, 391 U.S. 145, 155-156 (1968). This Court has not addressed, but should settle, the important issues presented, and the circuits are in direct conflict as to the important question of the proper standard of review of Gaudin error under the circumstances presented. The Court should grant review to correct the erroneous application of Fed.R.Cr.P. 52(b) by the Court of Appeals to review a verdict never fully reached by the jury in this case, as well as to answer the fundamentally important question of the proper standard of review of Gaudin error in circuits where Gaudin constituted a clear break with prior binding precedent during the pendency of direct appeal.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



Wm. J. Sheppard, Esquire
COUNSEL OF RECORD
D. Gray Thomas, Esquire
Elizabeth L. White, Esquire
Sheppard and White, P.A.
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661

COUNSEL FOR PETITIONER

August 2, 1996

No. 96-_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

JOYCE B. JOHNSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Wm. J. Sheppard, Esquire
COUNSEL OF RECORD
D. Gray Thomas, Esquire
Elizabeth L. White, Esquire
Sheppard and White, P.A.
215 Washington Street
Jacksonville, Florida 32202
(904) 356-9661

COUNSEL FOR PETITIONER

August 2, 1996

TABLE OF CONTENTS

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-2417

D.C. Docket No. 94-54-Cr-J-20

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOYCE B. JOHNSON,

Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida

---

(March 19, 1996)

Before ANDERSON and BLACK, Circuit Judges, and FAY, Senior Circuit Judge.

ANDERSON, Circuit Judge:

On December 9, 1994, a jury convicted defendant-appellant Joyce B. Johnson of perjury in violation of 18 U.S.C. § 1623. The district court sentenced Johnson to 30 months in prison. On appeal from that conviction, Johnson raises a number of claims, all of which we find to be without merit and to warrant no discussion, with the exception of her claim regarding the trial court's instruction to the jury regarding the materiality element of the perjury count. Because we find that the trial court's erroneous instruction does not rise to the level of plain error, we affirm Johnson's conviction and sentence.

Johnson had a long-term relationship with Earl James Fields, who in the late 1980s was the focus of a federal investigation into alleged cocaine trafficking involving Fields and another man, Willie Bennett. That investigation

revealed that Bennett and Fields netted around $10 million from their trafficking activities. In 1993, federal investigators and a federal grand jury began a search for that money. To this end, Johnson was called to testify before the grand jury on March 25, 1993. Johnson testified that she was employed by the Florida Department of Health and Rehabilitative Services at an annual salary of $34,000. She also testified that she owned five real properties including her house, to which she had added considerable improvements. Those improvements raised the appraised value of the property from $75,600 when Johnson purchased it in 1991 to $344,800 in 1993. Johnson insisted before the grand jury that she received the money for the improvements, which she asserted amounted

to between $80,000 and $120,000, from a friend of her mother.

Johnson was indicted for perjury as a result of her testimony before the grand jury. It was revealed at Johnson's subsequent trial that Fields negotiated the purchase of Johnson's home from its previous owner. Johnson paid for the property with eight different cashier's checks, including two checks from a corporation in which Fields had an interest.

At the close of Johnson's trial, the trial judge charged the jury that the element of materiality in the crime of perjury is a question for the judge to decide. Accordingly, the judge instructed the jury that Johnson's statements to the grand jury were material to the grand jury's investigation. Johnson did not object to this instruction. In fact, when

the United States began to present evidence concerning materiality during the trial, Johnson's counsel objected, insisting that materiality was a matter for the trial judge and not the jury. The Assistant United States Attorney attempted to question the grand jury foreman about the nature of the grand jury's investigation, and specifically about Fields' narcotics distribution and money laundering activities. At that point, Johnson's counsel stated, "Your honor, this is an improper matter for the jury. It goes to materiality and that's a matter for the Court, and I object." This objection was overruled.[1]

---

[1] It could be argued that Johnson invited the district court's error in this case by insisting that the materiality determination be made by the court. See United States v. Chandler, 996 F.2d 1073, 1084 (11th Cir. 1993) (because defendant argued for and submitted jury instruction at issue, he invited the error contained

The United States Supreme Court has subsequently ruled that the materiality of false statements is an issue for the jury, not the judge. United States v. Gaudin, ___ U.S. ___, 115 S.Ct. 2310 (1995). This is true of prosecutions for perjury under §1623. See Porat v. United States, ___ U.S. ___, 115 S.Ct. 2604 (1995). However, because Johnson did not object at trial to the district court's determination of the materiality issue, we review the district court's decision to reserve the materiality determination for itself for

---

therein and cannot on appeal complain that the instruction was erroneous); United States v. Hill, 500 F.2d 733, 738 (5th Cir. 1974) (particular jury instruction alleged on appeal to be erroneous was invited error because defense requested that instruction). It is likely that Johnson's counsel did not want this evidence before the jury, because it would hurt Johnson's case. However, because we find that the district court did not commit plain error, we need not reach the issue of invited error.

plain error. United States v. Kramer, 73 F.3d 1067, 1074 (11th Cir. 1996); see also Fed.Rule Crim P. 52(b); United States v. Olano, ___ U.S. ___, 113 S.Ct. 1770, 1777 (1993).

The Supreme Court's decision in Olano sets forth a three-part test for clear error determinations. Reviewing courts must investigate: (1) if there was indeed error, (2) if that error was plain (i.e. clear or obvious), and (3) if that plain error affected "substantial rights." Id. at 1777-1778; United States v. Stevenson, 68 F.3d 1292 (11th Cir. 1995). If we find clear error that affects Johnson's "substantial rights," we have the discretion to remedy the district court's error. Olano, 113 S.Ct. at 1779. That discretion is to be exercised when "a miscarriage of justice would otherwise result," such that "the error seriously

affect[s] the fairness, integrity or public reputation of judicial proceedings." Id. (internal quotations omitted).

We conclude that the trial court's error in this case does not satisfy the three-part test set forth above. Assuming arguendo that the district court's error was clear or obvious, we hold that it did not affect the "substantial rights" of the defendant. To implicate "substantial rights," an error must have been prejudicial such that it affected the outcome of the original trial. Id. at 1777-1778; Kramer, 73 F.3d at 1074. Johnson bears the burden of persuasion with respect to the determination of prejudice. Olano, 113 S.Ct. at 1778; Kramer, 73 F.3d at 1074 n. 17; see also United States v. Chandler, 996 F.2d 1073, 1087 (11th Cir. 1993). Normally this

requires that the appellant make a specific showing of prejudice. Olano, 113 S.Ct. at 1778.

After reviewing the record in this case, we find overwhelming evidence of the materiality of Johnson's statements. The focus of the grand jury's investigation was the whereabouts of the proceeds from Fields' drug trafficking activities. There was substantial evidence that Johnson, and specifically her house, was one of the avenues through which Fields laundered that money. No reasonable juror could conclude that Johnson's false statements about the source of the money used to purchase and renovate her house were not material to the grand jury's investigation. Therefore, Johnson's conviction for perjury is affirmed.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-2417

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOYCE B. JOHNSON,

Defendant-Appellant.

On Appeal from the United States District Court for the Middle District of Florida

---

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC
(Opinion _____, 11th Cir., 19___, _____ F.2d _____/

Before: ANDERSON and BLACK, Circuit Judges, and FAY, Senior Circuit Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35,

Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ R. Lanier Anderson
UNITED STATES CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-2417

D.C. Docket No. 94-54-Cr-J-20

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOYCE B. JOHNSON,

Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida

---

Before ANDERSON and BLACK, Circuit Judges, and FAY, Senior Circuit Judge.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of conviction and sentence imposed by the said District Court in this cause be and the same are hereby AFFIRMED.

Entered: March 19, 1996
For the Court : Miguel J. Cortez, Clerk

By: /s/ Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: 6/20/96